

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

FRANCISCAN ALLIANCE, INC.;
SPECIALTY PHYSICIANS OF
ILLINOIS, LLC;;
CHRISTIAN MEDICAL &
DENTAL ASSOCIATIONS;

- and -

STATE OF TEXAS;
STATE OF WISCONSIN;
STATE OF NEBRASKA;
COMMONWEALTH OF
KENTUCKY, by and through
Governor Matthew G. Bevin;
STATE OF KANSAS; STATE OF
LOUISIANA; STATE OF
ARIZONA; and STATE OF
MISSISSIPPI, by and through
Governor Phil Bryant,

Plaintiffs,

v.

SYLVIA BURWELL, Secretary
of the United States Department of
Health and Human Services; and
UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Defendants.

**NOTICE OF FILING
EVIDENCE IN SUPPORT OF
STATE PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Civ. Action No. 7:16-cv-00108-O

The State Plaintiffs, by and through counsel, hereby submit the attached Declaration of Robert P. Kukla in support of their motion for preliminary injunction.

Respectfully submitted this the 19th day of December, 2016.

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STATE OF TEXAS; STATE OF

WISCONSIN; STATE OF

NEBRASKA; COMMONWEALTH

OF KENTUCKY, by and through

Governor Matthew G. Bevin;

STATE OF KANSAS; STATE OF

LOUISIANA, STATE OF ARIZONA, and

STATE OF MISSISSIPPI, by and through

Governor Phil Bryant

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2016, I electronically filed the foregoing document through the Court's ECF system, which automatically serves notification of the filing on counsel for all parties.

/s/ Austin R. Nimocks
AUSTIN R. NIMOCKS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

FRANCISCAN ALLIANCE, INC., *et al.*,

Plaintiffs,

v.

SYLVIA BURWELL, *et al.*,

Defendants.

No. 7:16-cv-00108

**DECLARATION OF
ROBERT P. KUKLA**

I, Robert P. Kukla, am a citizen of the United States, am over the age of eighteen, and am competent to testify. The following statements are true and correct and based on my personal knowledge:

1. I am the Director of Benefit Contracts for the Employees Retirement System of Texas ("ERS"), the agency that provides retirement and other benefit programs for state of Texas employees, retirees, and their dependents ("GBP plan participants").

2. ERS administers the Texas Employees Group Benefits Program ("GBP"), which provides coverage for health, life, dental, Voluntary Accidental Death & Dismemberment, and short and long-term disability for GBP plan participants.

3. As of August 31, 2016, GBP health insurance plans cover about one of every 52 Texans.

4. As of August 31, 2016, ERS had approximately 556,500 GBP plan participants, about 439,200 of whom were participants in HealthSelect of Texas.

5. For participants in HealthSelect of Texas, ERS paid about \$2.8 billion in medical and pharmacy claims in plan year 2016, which ran from September 1, 2015 to August 31, 2016.

6. In the current plan year, HeathSelect excludes coverage for gender reassignment surgery-related services and non-medically necessary abortion (except in cases of criminal activity).

7. I am aware that on May 18, 2016, the United States Department of Health and Human Services published a new rule, 45 C.F.R. § 92.1 *et seq.* ("Rule"), to interpret Section 1557 of the Affordable Care Act.

8. Section 92.4 of the Rule interprets "on the basis of sex" contained in Title IX to include "gender identity" and "termination of pregnancy."

9. If the Rule prohibits health insurance plans from categorically excluding coverage for gender reassignment surgery-related services, then ERS will have to modify GBP health insurance plans to cover these procedures to the extent required by applicable law.

DECLARATION UNDER PENALTY OF PERJURY

I, Robert P. Kukla, a citizen of the United States and a resident of Texas, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing Declaration is true and correct.

Executed this 16th day of December, 2016.



Robert P. Kukla
Director of Benefit Contracts
Employees Retirement System of Texas